

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

DARRIAN BLACK, ROGER J. MIRACLE,)
ANN M. MIRACLE, VIRGINIA LOUISE)
BLEEG, HAROLD S. MacLAUGHLAN, and)
REBECA MacLAUGHLAN,)
Plaintiffs,)
vs.)
RICK HASELTON, REX ARMSTRONG,)
ELLEN ROSENBLUM, PAUL DE MUNIZ,)
W. MICHAEL GILLETTE, ROBERT DURHAM,)
THOMAS BALMER, RIVES KISTLER,)
VIRGINIA LINDER, JACK LANDAU, and)
DEBBIE SLAGLE, all in their)
official capacities,)
Defendants.)

No. 03:12-cv-02213-HU
No. 03:12-cv-02221-HU
No. 03:12-cv-02222-HU

FINDINGS & RECOMMENDATION
ON MOTION TO DISMISS

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1 HUBEL, Magistrate Judge:

2 The plaintiffs in these three consolidated cases bring
3 identical claims against the defendants, seeking declaratory and
4 injunctive relief. The plaintiffs, as well as other individuals
5 who are not parties to the present actions, brought eminent domain
6 actions in Clackamas County Circuit Court against Metro, "a metro-
7 politan service district," under Measure 37, originally codified as
8 ORS § 197.352 (now ORS § 195.305). Measure 37 provided for "just
9 compensation" to property owners whose property value was reduced
10 by a land use regulation. ORS § 197.305(1). The plaintiffs own
11 properties affected by a Metro ordinance imposing certain land use
12 restrictions. They applied to Metro for just compensation, and
13 when their claims were denied, the plaintiffs sued Metro in the
14 Clackamas County Circuit Court.

15 The parties in the state cases entered into a stipulation of
16 facts, based upon which the state court entered conclusions of law,
17 and rendered judgment awarding the plaintiffs "just compensation in
18 the amount of \$14,818,158." *Bleeg v. Metro*, 229 Or. App. 210, 214,
19 211 P.3d 302, 304 (2009) ("*Bleeg*"), *rev. denied*, 349 Or. 56, 240
20 P.3d 1097 (2010), *cert. denied sub nom. Black v. Metro*, ___ U.S.
21 ___, 131 S. Ct. 2970, 180 L. Ed. 2d 247 (2011) (mem.) ("*Black*").
22 The judgment was entered on December 5, 2007. The next day,
23 December 6, 2007, Measure 49 became effective. Measure 49 "extin-
24 guish[ed] and replace[d] the benefits and procedures that Measure
25 37 granted to landowners." *Corey v. Dept. of Land Conserv. &*
26 *Devel.*, 344 Or. 457, 465, 184 P.3d 1109, 1113 (2008).

27 On December 7, 2007, the day after Measure 49 became
28 effective, "the trial court entered corrected general judgments

1 that added a money award to the judgment for each plaintiff."
 2 *Bleeg*, 229 Or. App. at 214, 211 P.3d at 304. The court awarded
 3 \$1,580,000 to plaintiff Darrian Black, Dkt. #3, ¶ 5, in 03:12-cv-
 4 02213-HU; \$2,400,000 to plaintiffs Ann and Roger Miracle, *id.*;
 5 \$10,540,658 to plaintiff Virginia Bleeg, Dkt. #3, ¶ 5, in 03:12-cv-
 6 02221-HU; and \$297,500 to plaintiffs Harold and Rebecca MacLaugh-
 7 lan, Dkt. #4, ¶ 5, in 03:12-cv-02222-HU. These "corrected general
 8 judgments . . . included a notation that they were *nunc pro tunc* to
 9 December 5." *Bleeg*, 229 Or. App. at 214, 211 P.3d at 304.

10 Metro appealed all of the corrected judgments. On June 24,
 11 2009, the Oregon Court of Appeals ("COA") issued a consolidated
 12 opinion in all of the state cases. *Bleeg*, *supra*. The COA did not
 13 reach Metro's assignments of error, however, because the court
 14 found the plaintiffs' cases were no longer justiciable after the
 15 enactment of Measure 49. The COA held that because the time to
 16 appeal had not yet run, "the dispute involving plaintiffs' Measure
 17 37 claims for just compensation was ongoing as of the time that
 18 Measure 49 became effective - indeed that ongoing dispute about
 19 plaintiffs' Measure 37 claims for just compensation is the subject
 20 of this appeal." *Bleeg*, 229 Or. App. at 217, 211 P.3d at 306.
 21 Thus, unlike the cases relied on by the plaintiffs, see Dkt. #34¹,
 22 the judgment in the trial court had not become final, in the sense
 23 that the time to appeal had not run. As a result, the court held
 24 the plaintiffs' Measure 37 claims were superseded by Measure 49,
 25 which effectively "deprive[d] the trial court's judgments . . . of
 26 continuing viability." *Id.* For this reason, the COA held the

27
 28 ¹Except where noted otherwise, citations to docket numbers
 refer to the main case, 03:12-cv-2213-HU.

1 plaintiffs' Measure 37 cases were no longer justiciable. The COA
2 vacated the judgments, and remanded the plaintiffs' cases for entry
3 of judgment dismissing their claims. *Id.*, 229 Or. App. at 218-19,
4 211 P.3d at 306. The plaintiffs' petition for review was denied by
5 the Oregon Supreme Court on December 9, 2010. *Bleeg*, 349 Or. 56,
6 240 P.3d 1097 (2010). The United States Supreme Court denied
7 review on June 6, 2011. *Black, supra*. Acting in her capacity as
8 Clerk of the Clackamas County Circuit Court, defendant Debbie
9 Slagle docketed the final appellate judgment in the circuit court.

10 The plaintiffs bring the current cases against all of the
11 Oregon Court of Appeals judges who participated in the *Bleeg*
12 decision (i.e., defendant Judges Haselton, Armstrong, and
13 Rosenblum); all justices of the Oregon Supreme Court who partici-
14 pated in the denial of review (i.e., defendant Justices de Muniz,
15 Gillette, Durham, Balmer, Kistler, Linder, and Landau); and Debbie
16 Slagle, trial court administrator for the Clackamas County Circuit
17 Court. In 275 numbered paragraphs comprising 51 causes of action,
18 the plaintiffs claim the defendants' actions violated their rights
19 under the United States and Oregon constitutions. They seek a
20 declaration that (1) their judgments in the state cases "and legal
21 entitlements pursuant thereto are property interests protected
22 against state appropriation by the Constitution of the United
23 States"; (2) those property interests "have been taken by unconsti-
24 tutional state action"; (3) Slagle's action in vacating the trial
25 court's judgments constituted an unconstitutional taking without
26 compensation; (4) termination of their property interests was a
27 violation of their civil rights, their "rights of association," and
28 other constitutional rights; and (5) "termination of their final

judgment[s] in the Circuit Court was the implementation of a statewide judicial scheme to retroactively and unconstitutionally take away rights and entitlements of claimants under Measure 37.” Dkt. #3 in 03:12-cv-02213-HU, ¶¶ 265-73. The plaintiffs also seek a writ of mandamus directing Slagle to vacate the dismissal of the plaintiffs’ judgments, and to “reinstate *nunc pro tunc* to December 5, 2007[,] the final judgment of the Circuit Court of Clackamas County.” *Id.*, ¶ 264.

The case is before the court on the defendants’ motion to dismiss, Dkt. #22. The defendants assert three alternative grounds for dismissal. First, they argue this court lacks jurisdiction to grant the requested relief. Second, they argue all of the defendants are entitled to absolute immunity from suit for rendering judicial decisions and performing tasks as part of the judicial process. Third, they argue each of the plaintiffs’ claims is “insufficient as a matter of law based on the constitutional principles identified.” Dkt. #23, p. 2.

DISCUSSION

A. Jurisdiction

The court lacks jurisdiction over the plaintiffs’ claims under the *Rooker-Feldman* doctrine. The United States Supreme Court is the only federal court that has jurisdiction to correct a state court judgment. Further, federal courts lack jurisdiction to review constitutional claims under 42 U.S.C. § 1983, when those claims are inextricably intertwined with the underlying state court decisions. *Rooker v. Fidelity Trust Co.*, 362 U.S. 413, 415-16, 44 S. Ct. 149, 150, 68 L. Ed. 362 (1923); *D.C. Court of Appeals v.*

1 *Feldman*, 460 U.S. 462, 483, 103 S. Ct. 1303, 1316, 75 L. Ed. 2d 206
2 (1983).

3 In addition, it is well settled that federal courts lack
4 jurisdiction to issue writs of mandamus to direct either state
5 officials or state courts in the performance of their duties. "A
6 petition for a writ of mandamus requesting such relief is frivolous
7 as a matter of law." *Ward v. Hall*, 2008 WL 3100784, at *1 (D. Or.
8 Aug. 1, 2008) (Haggerty, J) (citing *Demos v. U.S. District Court*,
9 925 F.2d 1160, 1161-62 (9th Cir. 1999), in turn citing 28 U.S.C. §
10 1651, and *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89,
11 121, 104 S. Ct. 900, 919, 79 L. Ed. 2d 67 (1984)).

12 Simply stated, this court lacks jurisdiction over the
13 plaintiffs' claims, and the defendants' motion to dismiss should be
14 granted. Because no amendment could change this result, the
15 dismissal should be *with prejudice*.

16 17 **B. Judicial Immunity**

18 Even assuming *arguendo* that this court did have some basis for
19 jurisdiction over the plaintiffs' claims, all of the defendants
20 would be entitled to absolute judicial immunity for their actions.
21 As a result, the plaintiffs have failed to state a claim for which
22 relief may be granted, and the case should be dismissed pursuant to
23 Federal Rule of Civil Procedure 12(b)(6).

24 "Absolute immunity is generally accorded to judges . . .
25 functioning in their official capacities." *Olsen v. Idaho State*
26 *Bd. of Med.*, 363 F.3d 916, 922 (9th Cir. 2004) (citing, *inter alia*,
27 *Stump v. Sparkman*, 435 U.S. 349, 364, 98 S. Ct. 1099, 1108, 55
28 L. Ed. 2d 331 (1978)). Judges enjoy absolute immunity from a civil

1 action for damages, as well as for equitable relief. See *Mireles*
 2 *v. Waco*, 502 U.S. 9, 9, 112 S. Ct. 286, 287, 116 L. Ed. 2d 9 (1991)
 3 (citing cases); *Mullis v. Bankruptcy Court for the Dist. of Nev.*,
 4 828 F.2d 1385, 1394 (9th Cir. 1987) (judicial immunity extends to
 5 actions for equitable relief). "Although unfairness and injustice
 6 to a litigant may result on occasion, 'it is a general principle of
 7 the highest importance to the proper administration of justice that
 8 a judicial officer, in exercising the authority vested in him [or
 9 her], shall be free to act upon his [or her] own convictions,
 10 without apprehension of personal consequences to himself [or
 11 herself].'" *Mireles*, 502 U.S. at 10, 112 S. Ct. at 287 (quoting
 12 *Bradley v. Fisher*, 13 Wall. 335, 347, 20 L. Ed. 646 (1872)).

13 "[T]he immunity covers only those acts which are 'judicial' in
 14 nature." *O'Neil v. City of Lake Oswego*, 642 F.2d 367, 369 (9th
 15 Cir. 1981) (citing *Stump v. Sparkman*, 435 U.S. 349, 360-64, 98
 16 S. Ct. 1099, 1106-08, 55 L. Ed. 2d 331 (1978)). However, "(a)
 17 judge will not be deprived of immunity because the action he [or
 18 she] took was in error, was done maliciously, or was in excess of
 19 his [or her] authority; rather he [or she] will be subject to
 20 liability only when he [or she] acted in the clear absence of all
 21 jurisdiction." *Id.* (internal quotation marks, citations omitted);
 22 see *Cleavinger v. Saxner*, 474 U.S. 193, 199-200, 106 S. Ct. 496,
 23 500, 88 L. Ed. 2d 507 (1985); *Schucker v. Rockwood*, 846 F.2d 1202,
 24 1204 (9th Cir. 1988).

25 In addition, "under absolute 'quasi-judicial immunity,' court
 26 personnel whose challenged activities are an 'integral part of the
 27 judicial process' are immune from liability." *Phiffer v. Oregon*,
 28 2011 WL 7396602, at 6 (D. Or. Nov. 21, 2011) (Sullivan, MJ)

1 (quoting *Morrison v. Jones*, 607 F.2d 1269, 1273 (9th Cir. 1979)).
2 This quasi-judicial immunity extends to court clerks. *Sharma v.*
3 *Stevas*, 790 F.2d 1486 (9th Cir. 1986) (citing *Morrison*, 607 F.2d at
4 1273).

5 There is no dispute that the actions of the defendants in this
6 case were "judicial" in nature. The plaintiffs, however, argue the
7 defendants "never had judicial immunity" because "they had no
8 []statutory or constitutionally delegated duties." Dkt. #34, p. 5.
9 They argue further that the defendants are not shielded by the
10 "state's sovereign immunity" because they violated federal law.
11 Dkt. #34, p. 6; see *id.*, pp. 5-25. The plaintiffs argue that when
12 Metro filed its appeal, the COA first had to determine whether it
13 had jurisdiction to consider the merits of the appeal. According
14 to the plaintiffs, "[t]he decision that the case was nonjusticiable
15 [and] moot necessarily was a decision that the COA lacked jurisdic-
16 tion to do anything but dismiss the appeal." *Id.*, p. 18. The
17 plaintiffs conclude, therefore, that the COA exceeded its authority
18 and acted outside its jurisdiction when it ordered the trial court
19 to dismiss the plaintiffs' cases as moot. *Id.* Thus, they reason,
20 the defendants' actions were "'taken in the complete absence of all
21 jurisdiction,'" and therefore, the defendants are not immune for
22 their actions. *Id.* (quoting *Mireles v. Waco*, 502 U.S. 9, 11-12,
23 112 S. Ct. 286, 288, 116 L. Ed. 2d 9 (1991)).

24 The plaintiffs' analysis is flawed. The enactment of Measure
25 49 did nothing to change the jurisdiction of Oregon appellate
26 courts to hear appeals from civil judgments rendered by Oregon's
27 circuit courts. The Oregon appellate courts' jurisdiction is
28 established by law. See Or. Const. art. VII, § 6; ORS § 2.516; see

also ORS §§ 19.415, 19.420. "The Supreme Court or the Court of Appeals has jurisdiction of the cause when the notice of appeal has been [properly] served and filed. . . ." ORS § 19.270(1). Pursuant to its statutory authority, the COA considered existing Oregon Supreme Court precedents interpreting Measure 49 and its interplay with Measure 37, and concluded that because the plaintiffs cases were still "live" controversies at the time the appeal was filed, their claims were subject to, and superseded by, Measure 49. *Bleeg*, 229 Or. App. at 217, 211 P.3d at 306. The COA's decision in that regard, the Oregon Supreme Court's denial of review, and Slagle's actions in docketing and complying with the appellate judgment, all were actions judicial in nature, taken by the defendants in their judicial (or quasi-judicial, in the case of Slagle) capacities. The court finds the Oregon courts acted within their jurisdiction, and all of the defendants are entitled to absolute judicial immunity from all of the plaintiffs' claims. Accordingly, the undersigned recommends the defendants' motion to dismiss be granted on this basis, as well, and that the dismissal be *with prejudice*.²

SCHEDULING ORDER

These Findings and Recommendations will be referred to a district judge. Objections, if any, are due by **December 9, 2013**. If no objections are filed, then the Findings and Recommendations

²Because the court finds dismissal is appropriate for lack of jurisdiction, and for failure to state a claim, the court does not reach the parties' arguments regarding the merits of the plaintiffs' individual claims.

1 will go under advisement on that date. If objections are filed,
2 then any response is due by **December 26, 2013**. By the earlier of
3 the response due date or the date a response is filed, the Findings
4 and Recommendations will go under advisement.

5 IT IS SO ORDERED.

6 Dated this 21st day of November, 2013.

7
8 /s/ Dennis J. Hubel

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Dennis James Hubel
Unites States Magistrate Judge